



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1994

Mr. G. Chadwick Weaver  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR94-167

Dear Mr. Weaver:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request for a decision has been assigned ID# 25202.

The City of Midland (the "city") received a request from a reporter for two 911 recorded calls. You sent to this office for review a tape of the two telephone calls. Call No. 1 is a recording of a man reporting an alleged suicide of another person. Call No. 2 is a recording of a woman who was killed while making the call. You indicate that the other sounds recorded are of the woman's attacker killing another person and then himself. The city contends that both of these recordings are excepted from disclosure under section 552.101 of the Open Records Act.

Section 552.101 excepts information from required public disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section allows information to be withheld under common-law privacy if it is highly intimate or embarrassing *and* if it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W. 2d 668, 682 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 328 (1982) at 2-3.<sup>1</sup> However, neither of these recordings may be withheld under section 552.101.

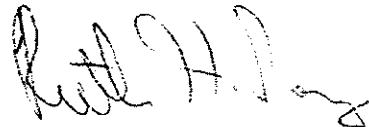
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<sup>1</sup>You stated that release of these tapes might be an intentional infliction of emotional distress, based upon *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993). In *Twyman*, the Texas Supreme Court refused to recognize the tort of negligent infliction of emotional distress, but adopted the tort of intentional infliction of emotional distress as set out in section 46(1) of the RESTATEMENT (SECOND) OF TORTS (1965), which provides that a person "who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily

As to Call No. 1, none of the information implicates the common-law privacy of the caller who reported the death. The only privacy interest implicated would have been that of the deceased, who died of an allegedly self-inflicted wound. *See generally* Open Records Decision No. 422 (1984). However, since an individual's right of common-law privacy is a personal right that does not extend past his own death, this tape may not be withheld on the basis of the deceased's privacy interest. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981) at 1. As to Call No. 2, you indicate that the individual who made the call, the alleged gunman and the other victim are also deceased. Therefore, no privacy interests remain to be protected under section 552.101. We note that this call also concerns the commission of crimes in which the public would have a legitimate interest. Open Records Decision Nos. 611 (1992) at 2; 409 (1984) at 2. As there is no basis for withholding these recordings, the requested tapes must be released to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 25202

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harm to the other results from it, for such bodily harm." The court stated that such liability would apply to certain types of "outrageous conduct":

The requirements of intent, extreme and outrageous conduct, and severe emotional distress before liability can be established will, we think, strike a proper balance between diverse interests in a free society. The balance, at minimum, must allow freedom of individual action while providing reasonable opportunity for redress for victims of conduct that is determined to be utterly intolerable in a civilized community.

855 S.W.2d at 622.

However, this office does not see the applicability of *Twyman* to the city's release of the tapes as required under the Open Records Act. *See* Government Code §§ 552.001 - .006; .201 - .203.

Enclosures: Submitted tapes

cc: Ms. Daphne Dowdy  
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(w/o enclosures)